

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-699

September 24, 2002

MAINE PUBLIC UTILITIES COMMISSION
Inquiry into Whether Incumbent Local Exchange
Carriers Should be Required to Provide Their
Customers with an Opportunity to Terminate
Special Contracts, Pursuant to Request for
Rulemaking by Freedom Ring Limited Liability Company

ORDER TERMINATING
INQUIRY

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

On April 23, 1997, in response to a request by Freedom Ring LLC (Freedom Ring), the Commission opened an Inquiry in the above-captioned docket into whether incumbent local exchange carriers (ILECs) should be required to provide their customers with an opportunity to terminate (without having to pay penalties for early termination) long-term contracts for interexchange and local (primarily Centrex) services in order to allow competitive interexchange carriers (IXCs) and local exchange carriers (CLECs) to compete for the customers' business. Freedom Ring asked that the Commission open a rulemaking proceeding to implement the relief sought by Freedom Ring, but the Commission declined to open a rulemaking. Instead, the Commission opened an Inquiry that sought comments from interested persons on 10 specific issues delineated in the Notice of Inquiry. Eight interested persons filed comments in response to the Notice, but the Commission has taken no further action in this docket since the comments were filed in May of 1997. As explained more fully in the body of this Order, we find that, due to the passage of time and the increase in competitive activity for both local exchange and interexchange services, the issues that were the subject of the Inquiry have been resolved and do not require further action by the Commission. Therefore, we will close this Docket.

In its Petition for Rulemaking, Freedom Ring sought to have the Commission promulgate a rule that would require ILECs to provide their customers with a "fresh look" opportunity to be freed from the restrictions of long term contracts (for both local and interexchange services) that would otherwise prevent CLECs and IXCs from competing for customers' business. While the Commission declined to initiate a rulemaking, it did open an Inquiry so that it could gather information about existing contracts between NYNEX (now Verizon Maine), other ILECs and their customers, and so that it could receive preliminary comments that might be used as a guide in a future rulemaking. The NOI issued by the Commission contained a series of questions concerning the then current contracts and seeking opinions about the structure of any proposed rule involving a "fresh look." The Commission also sought input concerning the legality of and any federal or state precedents for providing telephone customers with an

opportunity to terminate or renegotiate long-term special contracts with ILECs. The draft rule proposed by Freedom Ring was also attached to the Notice.

The Office of the Public Advocate (OPA) and seven telecommunications carriers, all of which were ILECs, CLECs or interexchange carriers (IXCs), filed comments with the Commission. The ILECs generally opposed the initiation of a rulemaking, stating that the contracts at issue, mainly involving the provision of Centrex and toll services, were entered into in a competitive environment. Vendors of other customer premise equipment, mainly PBXs and key systems, presented competition to Centrex service. In the case of toll, competition came from other long distance providers. The ILECs claimed that contracts were freely negotiated at arm's length and no public interest purpose would be served by allowing customers to abrogate the agreements. Generally, contracts that required longer term commitments (and penalties for early termination) provided customers with lower rates. The ILECs pointed out that, particularly in the case of toll services, other competitive IXCs also offered contracts that required longer terms for lower rates.

The OPA and the CLECs who filed comments generally stated that the "fresh look" rule was necessary in order to "jump start" competition in the interexchange and the nascent local exchange market. The CLECs asserted that in anticipation of other competitors entering the local exchange market, Verizon had locked up its best customers with long-term deals that contained onerous termination clauses. Therefore, few customers would be willing to switch to competitive carriers and incur the heavy cost of early termination. Thus, the ability of new entrants to compete was severely impaired. Finally, the IXCs generally supported the concept of a "fresh look," provided it applied only to local exchange services and not to the toll market, which they asserted was already fully competitive.

The comments that were filed advocating adoption of a rule generally supported a "fresh look" period of one to two years, at most. That approach would provide customers with existing contracts a window in which to terminate those contracts without incurring early-termination penalties. Customers without contracts or those whose contracts would expire during the term of the rule would, presumably, be aware of the presence of new competitors in the market and would seek out the best deal on their own.

It now has been over five years since the comments were filed in this docket, and local exchange competition has moved forward without our promulgation of a "fresh look" rule. While the pace at which local competition has advanced has been somewhat restrained, our view is that a "fresh look" rule would not have appreciably hastened the process. Presumably, many contracts have expired within the last five years, and those customers have had the opportunity renegotiate their agreements or to seek out more advantageous arrangements. The Commission has certified many CLECs, and several have been able to compete based on price and service quality. In addition, the interexchange market has numerous competitors, and customers have many options for satisfying their specific telecommunications needs.

We find that there is no need to promulgate the type of rule requested by Freedom Ring. Accordingly, we will not commence a rulemaking and will close this docket.

Dated at Augusta, Maine, this 24th day of September, 2002.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond